

12/4/71



DEPARTMENT OF STATE  
ACTION MEMORANDUM

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To: J - Ambassador Johnson

From: SCI - Herman Pollack HP  
EUR - Martin Hillenbrand

FILE NUMBERS

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U.S. Policy for Implementing Article III  
of the NPT after March 1, 1972

Summary:

It is apparent that Euratom will not have concluded an agreement with the IAEA on the application of the safeguards to nuclear material by March 1, 1972, as we and others have interpreted the requirements under Article III of the NPT. There is concern among the Euratom countries that the US, to meet its own obligations under the NPT, may terminate its supply of enriched uranium to these countries at that time. In addition, the Soviets have indicated they may make a public issue should we continue to deliver material. Considering the fact, however, that Euratom is diligently negotiating a safeguards agreement with the IAEA, we are proposing to apply a "rule of reason" and to continue to supply enriched uranium to the Euratom countries for an interim period pending conclusion of their negotiations with the IAEA. We believe we can convince the Soviets that our course of action is more likely to lead to ratification of the NPT by Euratom countries than termination of supply after March 1972.

Background:

Under Article III (2) of the NPT (Tab A), each party undertakes not to provide source or special fissionable material to any non-nuclear-weapon State unless that material shall be subject to the IAEA's safeguards system.

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Article III (4) requires with respect to the initial NPT parties that these safeguards agreements shall be negotiated and come into force within 180 days plus 18 months after the NPT itself (March 1, 1972). This deadline has been construed to apply to our shipments to non-parties for the purpose of Article III (2).

The status of negotiations between various countries and the IAEA is given at Tab B. The initial slow progress in the negotiations between Euratom and the IAEA on the safeguards question has been of particular concern to us. These negotiations did not begin until September of this year because of disagreements among the Euratom countries on the details of acceptable safeguards procedures (Euratom safeguards procedures are less intrusive than IAEA safeguards) and over resolution of the status of France under IAEA safeguards (bearing on the special status of France as a weapons State). Because of the slow progress in initiation of these negotiations, the AEC sent a letter to the Euratom Supply Agency in July (Tab C), pointing out that our obligations under the NPT might make it necessary to terminate or suspend deliveries if such delivery were inconsistent with these obligations. This letter caused some uneasiness within the Euratom countries and Fernand Spaak raised the question during a recent visit as to how the US intends to approach the question of fuel supply after March 1972, recognizing that the IAEA-Euratom negotiations on a safeguards agreement will not be completed by that time (the earliest date for completion of these negotiations appears to be June 1972). Spaak has been pressing for some form of written assurance from the US that we will continue to supply material after March 1972.

This matter has been further complicated by recent indications from the Soviets (Tab D) that they are focussing on the March 1 deadline and are contemplating using the threat of a cut-off of fuel supplies to hasten ratification of NPT and negotiation of safeguards agreements.

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They may call public attention to failure of other countries to meet Article III obligations as they interpret them (i.e. there should be no deliveries of special nuclear material after March 1, 1972, to countries which have not accepted IAEA safeguards).

Discussion:

We feel that circumstances and historical precedent permit us to adopt a "rule of reason" toward the Euratom problem and we suggest that the following views be transmitted informally to the EC Commission:

(1) US continues to attach the highest importance to early ratification of NPT by Euratom and other key industrialized states.

(2) The US views its responsibilities under Article III (2) of NPT most seriously. However, as Secretary Rogers indicated before the Senate Foreign Relations Committee on February 18, 1969, we have consistently and publicly stated that we would bring "rule of reason" to bear on the question of continued fuel supply in the event a recipient of our enrichment services has not brought into force an agreement with IAEA by March, 1972.

(3) We are encouraged that the negotiations between Euratom and the IAEA have been inaugurated on a positive note following the constructive participation of EC member states in the deliberations of the Safeguards Committee. It is our understanding that the two sides are negotiating diligently with the expectation of being able to present an agreed text to the June IAEA Board of Governors for its approval. We wish to be as helpful as possible in seeing that that expectation is fulfilled and that the requirements of Article III are met as promptly as possible.

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(4) Against this background and recognizing that there is every reason to expect that the materials we supply to Euratom will be subject to an IAEA/Euratom verification agreement in the near future, the USG has concluded that it can continue to supply enrichment services to the Community after March 2, 1972, on an interim basis. Our ability to preserve this position, however, is predicated on the expectation that a mutually satisfactory IAEA/Euratom agreement is clearly in sight.

(5) We plan to keep this matter under close continuing review and will consult with the Community if any developments arise which make it difficult for us to preserve this position.

With regard to the Soviet stand on this matter, we suggest that we informally discuss with them the importance we attach to early ratification of the NPT by Euratom and other key industrialized states and that in our view such ratification by the Euratom countries would be greatly hindered should an issue be made of the continued delivery of special nuclear material to these countries during the brief interim period which we expect prior to conclusion of IAEA/Euratom negotiations on a safeguards agreement. Our withholding of nuclear fuel would strengthen the hands of opponents of the treaty in Germany in particular and throughout Western Europe generally. It would be misunderstood as a threat to pressure Euratom into an agreement with the IAEA contrary to Euratom's negotiating desiderata. In discussing NPT in Moscow, the Soviets expressed satisfaction to our Embassy over the progress being made in IAEA/Euratom negotiations (Moscow's 8929, Tab E). We share their satisfaction and feel it would not be in the interest of either of us to raise this issue at a time when our allies are engaged in negotiations in good faith with IAEA and thus risk upsetting the favorable climate and the forward progress that have been noted.

We believe such arguments would be persuasive. The Soviets are as interested as we are in wide ratification

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of NPT and in the conclusion of safeguards agreements and are aware that agreement between Euratom and IAEA will lead to agreements with other key countries. It is also in Soviet interest to have the President's visit to Moscow take place in as favorable an atmosphere as possible. For these reasons, we do not believe that they would be inclined at this time to make NPT--a matter in which we have cooperated so successfully--a public issue between us. At the same time, we cannot expect the Soviet to remain patient for very long and that we should therefore continue to urge Euratom to conclude its agreement with the IAEA.

Recommendation:

That you approve the proposed approach on the question of supply of special nuclear material to Euratom during an interim period after March 1, 1972.

Approve                     

7 DEC 1971

Disapprove                     

*On assumption AEC concurs  
\* H. does not perceive any  
Congressional problem*

Attachments:

- Tab A - Article III
- Tab B - IAEA Safeguards
- Tab C - AEC letter to Felix Oboussier
- Tab D - Cable fr Vienna dated 12/01/71
- Tab E - Cable fr Moscow dated 12/01/71

Drafted by: SCI/AE:RLoftness:drw  
ext. 22432 - 12/03/71

Concurrences: SCI/AE - H.D. Brewster  
ACDA - C. Van Doren  
EUR/RPE - A. Katz  
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L/SCI - P. Pfund  
IO/SCT - R. Kent

*(Dr. Loftness informed  
by phone - 12/6/71  
E.L.P.)*

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